IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.MC.No. 1110 of 2007()

SC.687/2004 of ASSISTANT SESSIONS COURT, KASARAGOD
CRIME NO.563 OF 1992 OF KASARAGOD POLICE STATION

.....

PETITIONER: 5TH ACCUSED

P.E.MOIDU, 39 YEARS,
S/O.IDDIN, RESIDING NEAR KANDATHIL MOSQUE,
THALANGAR P.O., KASARGOD.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
THE STATION HOUSE OFFICER, KASARGOD POLICE
STATION, THROUGH PUBLIC PROSECUTOR, HIGH COURT
OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1110 of 2007

Dated this the 2nd day of July, 2007

O R D E R

Petitioner is accused No.5 in a Sessions Case and he faces allegations, inter alia, under Section 153(A) and 307 I.P.C. Final report was filed. Later, the prosecutor filed an application under Section 321 Cr.P.C to withdraw the case. The petitioner was not available at that time. Since he was not present, the case against him has been split up.

2. The co-accused were all set at liberty accepting the prayer for withdrawal under Section 321 Cr.P.C. As against the petitioner, the case was not withdrawn because he was not present before the learned Sessions Judge when the application for withdrawal was made. Hence the case against him was split up and the same is now coming up for trial as S.C.687 of 2004 before the Additional Sessions Court-III, Kasargod.

3. The petitioner has come to this Court with a prayer that the unnecessary trauma of continuation of prosecution against him may be prevented and the case against the petitioner may be quashed.

4. The learned Public Prosecutor after taking instructions makes it clear that the Prosecutor had only wanted the entire case to be withdrawn. But as the petitioner was not available before the

court at the relevant time, the benefit of that decision to withdraw the case could not be enjoyed by the petitioner. The learned Public Prosecutor submits that the State has no objection in the case against the petitioner being quashed by invoking the powers under Section 482 Cr.P.C in the peculiar facts and circumstances of the case.

5. I am satisfied that the request of the petitioner can be accepted in the light of the categoric statement made by the learned Public Prosecutor.

6. In the result, this Crl.M.C is allowed. S.C.No.687 of 2004 pending before the Additional Sessions Court-III, Kasargod against the petitioner/5th accused is hereby quashed.

(R.BASANT, JUDGE)

rtr/-